DEPARTMENT OF THE ARMY PERMITS

Mitigation Requirements

REGULATORY CONTEXT FOR REQUIRING MITIGATION

404(b)1 Guidelines (40 CFR 230.10(a)):

"...no discharge of dredged or fill material **shall be permitted** if there is a **practicable alternative** to the proposed discharge which would have **less environmental impact** to the aquatic ecosystem..."

404(b)1 Guidelines (33 CFR 320.4(r):

"...Consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing or compensating for resource losses..."

MITIGATION SEQUENCING

- 404(b)1 Guidelines require a 3-Phase Process
    1. Avoidance
    2. Minimization
    3. Compensation

MITIGATION SEQUENCING

1. AVOIDANCE OF IMPACTS TO THE RESOURCE (Alternative analysis):
   - Alternative sites
   - Modify site layout
   - Reduce scope of work
   - Use of alternate methods

MITIGATION SEQUENCING

2. MINIMIZATION OF IMPACTS TO THE RESOURCE:
   - Project modifications
   - Use of clean materials
   - Use of BMPs
   - Use of stormwater management

Note DA Permit Special Conditions

MITIGATION SEQUENCING

3. COMPENSATION FOR IMPACTS TO THE RESOURCE:

- only after steps 1 & 2 are met
- Replacement of lost functions & values
- On-site
- Off-site
- Mitigation Plan required

COMPENSATORY MITIGATION

4 BASIC METHODS:

1. Creation
2. Restoration
3. Enhancement
4. Preservation

DETERMINATION OF MITIGATION REQUIREMENTS

IMPACT AND MITIGATION SITES

- Functional assessment (wetlands)

  (HGM, WRAP, HEP, etc.)

- Ratios

  - subjective, based upon experience
  - project specific

MITIGATION PROVISIONS

- Success criteria
- Monitoring
- Contingencies
- Long-term protection

USE OF MITIGATION BANKS

- Use is optional
- Quick & easy
- Applicant not responsible
- Impact must be within service area
- Must be approved bank
- Must comply with sequencing requirements

SETTING UP WETLAND AND STREAM MITIGATION BANKS

1995 Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

Federal Register: November 28, 1995

(Volume 60, Number 28)

MITIGATION BANK

- **A mitigation bank is a site where wetlands and/or streams are restored, created, enhanced, or in exceptional circumstances, preserved.**
- **Purpose: To provide compensatory mitigation in advance of authorized impacts to similar resources, when compensatory mitigation cannot be achieved on-site or is not environmentally beneficial.**
- **Benefit of using Mitigation bank: Minimizes Temporal Loss and Risk since functional lift must be accomplished in advance of authorized impacts.**

MITIGATION BANK REVIEW TEAM (MBRT)

- An interagency group of Federal and State regulatory and resource agency representatives whose agencies are signatory to a banking instrument.
- Responsible for overseeing the establishment, use and operation of a mitigation bank.

MBRT performs site **inspections to determine feasibility** of wetland/stream mitigation bank.

MBRT approves **land management strategies**, **functional assessments** and **mitigation credit calculations/determinations.**

MBRT assesses **ecological lift** of wetlands and streams for determining **final success** of mitigation bank.

MBRT determines achievement of **success criteria for release of mitigation credits**

(Prescribe burn management, exotic species
control, road removal, tree planting

STEPS FOR DEVELOPING A STREAM AND WETLAND MITIGATION BANK

- **Initial Meeting with MBRT**
  - **Initial Review Checklist Data**
  - **MBRT Site Inspection**
- **Request Mitigation Banking Instrument (MBI) be prepared**
- **MBI Approval**
- **Financial assurances and CE**
- **Annual Monitoring, Success Criteria, Credit Releases**
- **Long-term Land Management Strategy**

MITIGATION BANKING INSTRUMENT (MBI)

Legal Contract Document that identifies:

- **Bank goals and objectives**
- **Ownership of lands, CE and other restrictions**
- **Location, size and classes of wetlands & streams and site plans**
- **Baseline conditions for wetland and stream**
- **Land Management strategies by habitat/stream type**

MITIGATION BANKING INSTRUMENT (CONT.)

- **Credit Generated using functional assessment methods**
- **Credit release schedule based upon incremental achievement of success criteria.**
- **Annual monitoring and reporting protocols**
- **Service area (USGS basin and watershed)**
- **Financial assurances**
- **Long-term management and**

Joint Federal/State Procedures for the Establishment and Operation of Wetland Mitigation Banks - Microsoft Internet Explorer
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Joint Federal/State Procedures for the Establishment and Operation of Wetland Mitigation Banks in the U.S. Army Corps of Engineers Mobile District (DRAFT April 2002)

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Mitigation Concepts
Existing Banks
District MB POC
MBRT Contacts
Bank Establishment
Related Sites
Assessment Tools
Site Map

- Fundamental Requirements of Mitigation Banks (html) (pdf)
- State/Federal Mitigation Bank Review Team Process (pdf)
- State/Federal Mitigation Bank Review Flow Chart (pdf)
- Banking Instrument Outline (html) (pdf)
- Banking Instrument Template (doc)
- Service Areas for Mitigation Banks (pdf)

Habitat Success Criteria/Credit Release Schedule/Monitoring

- Atlantic White Cedar Success Criteria (doc) (pdf)
- Bayhead Drain Habitat (doc) (pdf)
- Bottomland Hardwoods (doc) (pdf)
- Pine Flats Perf Standards (doc) (pdf)

- Supplemental Guidance (html) (pdf)
- Appendix A: MBRT Mailing List (html) (pdf)
- Appendix B: 1995 Federal Banking Guidance (pdf)
- Appendix C: Initial Review Checklist (html) (pdf)
- Appendix D: Prospectus Checklist (html) (pdf)

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The value of a mitigation bank is determined by quantifying the wetland or stream functions restored or enhanced in terms of "credits." Wetland and Stream assessment tools are utilized to determine how many credits a given bank can generate if the bank's management plan is successfully implemented. The following include wetland and stream assessment tools that are either under development or already in use at existing banks in the Mobile District.

Wetland Assessment Tools

- Hydrogeomorphic Approach - **HGM**
- Wetland Rapid Assessment Procedure - **WRAP**
- Compensatory Ratio Method - **Ratio Method**

STREAM Assessment Tools

- Mobile District - **STREAM: STReam Evaluation and Assessment Methodology**

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WETLAND RAPID ASSESSMENT PROCEDURE (WRAP)

- Identifies 6 specific functions to be measured: Wildlife, Overstory, Ground Cover, Wetland Buffer, Hydrology, Water Quality.
- Sites scored on a scale of 0-3.
- Mitigation Credit is based upon difference before/after “lift” scores X acres affected.

WETLAND RATIO METHOD

- Ratio Method is based on percentage of restoration, enhancement, preservation or creation.

MBRT Approach:

- Creation: Where there were none before.
- Restoration: Results in an increase in wetland acres of a wetland habitat type.
- Enhancement: Improves existing functions, does not result in a gain in acres of a wetland type.
- Preservation: High Quality Wetlands only

Stream Mitigation: Stream SOP

- Worksheets:
  - Stream Impact Worksheet,
  - In-Stream Mitigation Worksheet
  - Riparian Buffer Mitigation Worksheet
- Min/Max Riparian Buffer Width: 50-200 feet wide
- Up to 70 % of overall credits can come from riparian zone preservation.

Note: No credit for preserving buffer on impacted stream.

RESTORE TO REFERENCE SITE

U.S. ARMY CORPS O. ENGINEERS

MOBILE DISTRICT MITIGATION BANK GUIDANCE

RIBITS SITE

www.sam.usace.army.mil/RD/reg/